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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1968

No.

SIDNEY C. KNIGHT, M.D.

versus

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

MAY IT PLEASE THE COURT:

Petitioner seeks review by certiorari of a decision rendered by a state medical licensing authority which suspended his license to practice medicine for statutory cause found to exist after an administrative hearing.

Respondent, the Louisiana State Board of Medical Examiners, opposes his application for a writ of certiorari on the grounds that no federal question of substance, properly presented to the lower courts for adjudication, was decided contrary to applicable decisions of this Honorable Court and, on the further ground, that the administrative and judicial proceedings in-

volved were conducted in the accepted and usual manner so as to adequately provide the petitioner with the protection afforded by the Federal Constitution.

Respondent therefore respectfully submits that the cause presented need not be reviewed by this Honorable Court and that the petition for writ of certiorari should be denied.

STATEMENT OF THE CASE

The factual and legal issues raised by this administrative decision have been heard and reviewed by many courts during the course of the proceedings which started in 1964 and which have continued to date. Respondent therefore feels that a more complete statement of the case should be presented to this court for consideration.

During the year 1964, because of numerous complaints made to it, the Louisiana State Board of Medical Examiners was conducting an investigation into alleged abortion activities in this area involving medical practitioners. (T.R. 49).

Information was received concerning Dr. Knight's involvement with alleged abortions on several women. (T.R. 38, 53, 56, 101).

In March of 1964, the Board of Medical Examiners held a formal hearing regarding an alleged abortion by Dr. Knight on a girl named Mary H. This hearing was conducted with Dr. Knight present and represented

by counsel. The Board did not suspend his license because insufficient evidence was put before them. The girl was not available for testimony because she had left the state. Shortly thereafter, the Grand Jury returned a finding of no true bill on the same charge. (T.R. 34, 93, 103).

Dr. Knight's 1964 renewal license was placed on probationary status as a result of the information received by the Board up to that time. However, this status in no way interferred with his right to practice medicine in the State of Louisiana. (T.R. 35).

In December of 1964, the Board also scheduled a hearing involving an alleged abortion by Dr. Knight on Charmaine Marthet, an admitted prostitute. The formal hearing was cancelled when the Board received an affidavit allegedly made by Miss Marthet, transmitted by the attorneys then representing Dr. Knight, which affidavit purportedly denied her previous allegations. (T.R. 51).

Instead of holding a hearing on charges against Dr. Knight at that time, the Board simply received information from various witnesses, including Miss Marthet, as to their knowledge of abortion activities involving doctors in the area and also information concerning the statement previously received. (T.R. 51, 56).

No action whatsoever was taken against Dr. Knight's license as a result of the information received at that time. (T.R. 93). Dr. Knight failed to renew his license

in 1965 by satisfying the condition precedent of paying the renewal fee as required by Louisiana Revised Statutes 37:1280, (T.R. 94), therefore, no 1965 renewal license was sent to him. However, the Board did not take action in accordance with Louisiana Revised Statutes 37:1280 to suspend his license for failure to properly renew.

During the course of the continuing investigation by the Board, an investigator was informed by Miss Marthet in the latter part of February, 1965, that she was again pregnant, and that she intended to go to Dr. Knight for another abortion. (T.R. 57).

This situation did not involve the same pregnancy which was questioned in December of 1964. (T.R. 94).

The investigator was advised to obtain evidence, if possible, (T.R. 57), and to inform the Jefferson Parish authorities of the girl's intention. (T.R. 183).

Attempts were made to dissuade the girl from her expressed purpose by the investigator and the parish authorities, which included advising her father of the situation. (T.R. 154, 182, 184).

These attempts were unsuccessful, and therefore, the Parish authorities made arrangements to properly document the evidence should the abortion actually be committed. (T.R. 183).

Miss Marthet's pregnancy was confirmed by medical examination (Board Record 149, 150) and by lab-

oratory tests. (Board Record 132).

On March 22, 1965, the day of the abortion, she was also examined by a deputy coroner of Jefferson Parish in order to document her physical condition immediately prior to her visit to Dr. Knight's office. (Board Record 182, et seq.).

She was then accompanied by the parish authorities from the coroner's office to Dr. Knight's office and was called by him into a private examining room. (Board Record 96, *et seq.*).

Immediately upon leaving the doctor's office, she was once again returned to the same deputy coroner in the company of the parish authorities, who had kept her under constant surveillance in order to properly document her activities. (Board Record 96, *et seq.*)

The deputy coroner again examined her and found changes in her cervix which he stated were consistent with instrumentation and, in fact, in his opinion, could only have been the result of instrumentation occurring within the three-hour period since his first examination. (Board Record 185, 194).

She was then returned to her home, where some eight hours later she began to hemorrhage. She was advised to elevate her legs and to use ice packs to see if the hemorrhaging would stop. (T.R. 176).

Her condition did not improve, and she was therefore admitted to Baptist Hospital, where her condition was initially diagnosed as acute pelvic inflammatory disease and possible incomplete abortion. (See Exhibit R. 4).

On the morning of the 23rd, upon her admission into the hospital, she was examined by the same doctor who had originally confirmed her pregnancy, and he also noted changes in her cervix similar to those noted by the deputy coroner. (Board Record 151, Exhibit R. 4).

The Jefferson Parish authorities arrested Dr. Knight on the criminal charge of abortion on March 23, 1965.

While in the Baptist Hospital, the girl received medical treatment and the process of expulsion of the fetus was apparently arrested by medical care and she was therefore released from the hospital on March 31, 1965. (Exhibit R. 4).

Upon her release from the hospital on March 31, 1965, she was taken directly to the courtroom to testify in the preliminary hearing on the criminal charges against Dr. Knight. (T.R. 181).

During the preliminary hearing, Dr. Knight was fully advised of the charges against him and the evidence giving rise to his arrest was revealed to him. His attorneys at that time had a full opportunity to cross-examine and explore the facts giving rise to his arrest. The court reached a finding of probable cause for his arrest, and Dr. Knight was bound over for trial on the charge of criminal abortion.

After Miss Marthet's testimony was given at the preliminary hearing, she was then taken directly to the Convent of the Good Shepherd, where the Sheriff had made previous arrangements for her to stay for her personal protection. (Board Record 42).

Miss Marthet remained in the convent until April 3, 1965, at which time she began to hemorrhage once again and was readmitted to the hospital with a provisional diagnosis of septic incomplete abortion. (Exhibit R. 4, second admission).

On April 6, a dead three-and-one-half month old fetus was expelled. The products of the womb were examined in the normal course of hospital procedure and reported in the pathology section of the hospital record. (Exhibit R. 4).

The Board then decided that, a hearing should be held in order to determine whether or not any action should be taken by the Board. The Board sent Dr. Knight notice of the setting of a formal hearing to consider the matter and advised him of the charges that would be heard against him. (Board Exhibit 3).

Dr. Knight, through his counsel, petitioned the Civil District Court for the Parish of Orleans for an injunction staying the scheduled Board hearing because of the pendency of criminal proceedings still to be heard. The Court denied a temporary restraining order and set the hearing on the preliminary injunction on a date subsequent to the Board's scheduled hearing. (Board Exhibit 6).

Dr. Knight's counsel then requested more particulars of the charge being brought against him in the Board's hearing. These particulars were provided and the hearing was limited by stipulation to those matters arising out of Dr. Knight's arrest on March 23, 1965. (T.R. 17-20).

The formal hearing by the Board was held and a verbatim transcript was made of the testimony received. (Board Exhibit 8). This testimony has been summarized by counsel and is attached hereto for the convenience of the Court as Exhibit A.

The Board then met to review the transcript and to consider the evidence. After due consideration, they unanimously voted to suspend Dr. Knight's license and to send out the proper notices of their decision. (T.R. 25-27).

Dr. Knight continued to practice medicine even though his license was suspended. Furthermore, he did not seek any type of judicial review from the administrative proceedings. The Board instigated proceedings in the 24th Judicial District Court for the Parish of Jefferson to obtain an injunction against his practice until his license was properly reinstated. A preliminary injunction was granted. (Board Exhibit 16).

The trial court denied the right to suspensive appeal from the preliminary injunction and Dr. Knight thereafter appealed to the Fourth Circuit Court of Appeals, which appeal was denied.

Dr. Knight then stood trial on the criminal charges brought against him by the state, and the jury therein returned a verdict of "Not Guilty".

The civil injunction proceedings in the 24th Judicial District Court for the Parish of Jefferson were then assigned for hearing on the merits, but this hearing was continued at the request of Dr. Knight's counsel of record in order to permit amendment of their pleadings. This matter is still pending and has not been reset by Dr. Knight.

Dr. Knight then instigated proceedings in the Civil District Court for the Parish of Orleans praying for a writ of mandamus, injunction, and in the alternative, for trial de novo. This was the first judicial review sought by Dr. Knight of the administrative proceedings which resulted in the suspension of his license. The request for such review came subsequent to his acquittal on the criminal charges. The Board filed exceptions to these proceedings, and the trial court sustained an exception of lis pendens on the grounds that the same factual and constitutional issues were raised in the prior preliminary injunction hearing in the 24th Judicial District Court, wherein issues of notice and due process along with the constitutionality of the Medical Practice Act pertaining to administrative suspension were raised. An appeal was taken after denial of a rehearing. The Fourth Circuit Court of Appeals remanded the case for a rehearing on the merits by the lower court.

The petition for a writ of mandamus, injunction, and in the alternative, for trial de novo, was heard on the merits in the form of a trial de novo by the Senior District Judge for the Parish of Orleans. All of the factual and legal issues raised by the pleadings were heard during the course of a five-day trial during which testimony was received from eighteen witnesses called by Dr. Knight and two witnesses called by the Board of Medical Examiners.

Judgment was rendered on April 13, 1967, ordering that the alternative writ of mandamus and injunction be recalled and that the relator's suit be dismissed.

The trial judge rendered written reasons for his judgment, holding that notice to Dr. Knight was adequate; that the charges against the Board raised in his petition were without foundation; that Dr. Knight failed to prove any conspiracy or manufacturing of evidence against him, that the Board's action was not arbitrary and capricious in suspending his license; and that the court was convinced that Dr. Knight did in fact perform an abortion on Miss Marthet on March 22, 1965.

In its written reasons for judgment, the court also disposed of other allegations contained in Dr. Knight's supplemental petitions and specifically rejected the several constitutional issues contained therein. A copy of the reasons for judgment is attached hereto for the convenience of the court as Exhibit B.

Dr. Knight subsequently appealed to the Fourth Circuit Court of Appeals, who, under Louisiana law, reviewed both the facts and the law presented by the hearing on the petition for the writ of mandamus. The Court of Appeals affirmed the decision of the trial court on June 10, 1968, and a rehearing was denied on July 1, 1968. This decision is reported as *Knight v. Louisiana State Board of Medical Examiners,* 211 So. 2d 433. An application was made for writs of review to the Louisiana State Supreme Court, which application was denied on October 25, 1968. This is reported at 214 So. 2d 716.

I.

PETITIONER WAS NOT DENIED DUE PROCESS OF LAW

Petitioner alleges that his constitutional right to due process of law was denied because he was asked to testify before the Board in administrative proceedings while criminal charges were pending against him in criminal court and because significant evidence was withheld from the Board at the time of the administrative hearing which, if revealed, would have inured to his benefit.

A.

SELF-INCRIMINATION

In discussing this issue in brief, petitioner asserts the conclusion that the mere fact that he was asked to testify before the Board and that they were disappoint-

ed in his refusal is indicative of the fact that the Board had made up its mind about his guilt on the basis of his exercising his constitutional right to remain silent. This conclusion simply is not warranted and is in fact refuted by the mass of oral and documentary evidence taken by the Board and the opportunities afforded by them to petitioner to take additional time to present his defense or evidence in rebuttal, both of which were refused by the petitioner. Perhaps a far more reasonable, or at least equally fair, inference to be drawn from this circumstance is that a defense simply was not available for presentation.

It is not mandatory that administrative process be stayed during the pendency of criminal proceedings. The administrative process simply has to respect the individual's right to remain silent and to reject an inference of guilt from his silence.

A complete review of the administrative proceedings will illustrate the Board's attitude on this issue.

The Board was instructed by its counsel as to petitioner's right to remain silent in order to avoid self-incrimination.

Petitioner's attorney likewise commented on this constitutional right. Following this, the Chairman of the hearing simply expressed his desire to obtain as much information as possible to facilitate determination of the factual and medical issues presented.

An expression of hope that a colleague will provide them the full opportunity to hear his side of the story does not in itself indicate the imposition of any penalty for silence or an unwillingness to recognize the legal presumption in favor of the accused. Furthermore, an expression of disappointment in the event of the choice to remain silent is not conclusive of prejudice or indicative of professional coercion or compulsion to testify.

The Board is composed of doctors who simply indicated a desire to hear their colleague's side of the story before attempting to reach a decision that would have a far-reaching effect on his professional standing.

This attitude is further illustrated by the Board's offer to afford additional time to petitioner for the development of evidence in his defense or in rebuttal to that already presented to the Board. (See Board Proceedings, P. 15, 16, 209). Such an attitude certainly does not reflect a disregard for the petitioner's position, but shows, on the other hand, a willingness to afford him every opportunity to adequately present his position. This opportunity was declined by petitioner, who chose instead to rest his case and to submit the matter.

The situation presented by this case is completely different from the circumstances involved in the principal cases cited by petitioner in his brief. (See *Gardner v. Broderick,* 392 U.S. 273 (1968); *Uniformed Sanitation Men Association v. Commissioner of Sanitation,* 392 U.S. 280 (1968); *Spevack v. Klein,* 385 U.S.

311 (1967); *Garrity v. State of New Jersey*, 385 U.S. 493 (1967).

In the instant case, the Board went to great lengths to receive sufficient evidence to permit a reasonable decision on the facts with or without petitioner's testimony. Two police officers, a deputy coroner, two independent physicians, and the complaining witness were all heard and cross-examined.

This is totally different from a suspension based upon a mere refusal to testify. In short, the suspension of petitioner's license was not based upon his refusal "to waive a right which the constitution guarantees him", (Gardner v. Broderick, *supra.*) but was based instead on independent evidence establishing that just cause in fact existed for such suspension. Therefore, the issue raised by petitioner simply is not present in this case.

To say that the testimony of the various witnesses heard was the Board's own testimony, from its own paid witnesses, is to disregard reality and once again to allege that "the Board conspired to manufacture evidence against him", an allegation that was rejected by both the trial and the appellate court in their review of both the administrative hearing and the facts presented at the mandamus proceedings where such allegation was originally made.

Petitioner complains that the parallel proceedings against him under criminal law and administrative process put him in an impossible situation relative to

his constitutional right to avoid self-incrimination. He states that this precluded a presentation of his defense. However, it must be remembered that the administrative proceedings received judicial review in the mandamus proceedings *subsequent* to his acquittal on the criminal charge. At this time, petitioner was not in the position he complains of; the danger of self-incrimination had passed. The mandamus proceedings took five days of the court's time during which petitioner called eighteen witnesses to the stand on his behalf. An examination of that record will show that he utilized every possible factual defense available.

He attempted to show that evidence of abortions other than the one on March 22, 1965, were considered by the Board and that the Board, based on its previous information of his activities, had already made up its mind concerning his guilt before the hearing was held. He has raised inferences that all of the actions against him were the result of political jealousy and that coercion was used against one of the doctors to force testimony favorable to the Board's desires. He questions the probability of certain medical facts heard by the Board and has attempted to smear the reputation of several of the medical witnesses appearing for the Board.

However, one significant fact remains paramount through all of his efforts to attack the Board's proceedings. Although he has requested affirmative relief of an extraordinary nature, after the danger of self-incrimination had passed, he did not see fit to take the stand in those proceedings on his own behalf

to explain openly and candidly to that court what actually did happen insofar as he was concerned. The only reasonable inference that can be drawn from this situation is that any testimony he could have given that court would have been unfavorable to his own position. Surely, after having been presented this opportunity to defend himself, which was rejected, it cannot reasonably be said that his constitutional guarantees were not adequately protected.

It is therefore respectfully submitted that the issues raised in brief on this point do not raise a federal question of substance and that the proceedings involved were conducted in a manner which provided petitioner with the protections guaranteed to him by the constitution.

B.

WITHHOLDING EVIDENCE

Petitioner's initial argument under this heading implies that the Board sitting as an administrative tribunal did not constitute a fair and impartial tribunal because, allegedly, two members of the Board had knowledge of the evisceration of the fetus and withheld this information from the rest of the Board.

Suffice it to say that the exact description of the fetus, including the evisceration and its color, were fully described in the pathology reports contained in the hospital records submitted into evidence to the Board at the hearing. See Board Record P. 144, and

the pathology report in the hospital record identified as R. 4.

Furthermore, this argument implies that the Board ignored part of the evidence before it without any proof to support such an implication. The law presumed that a Board will reach a decision on the basis of the evidence put before it. *Simmons v. Pure Oil Co.*, 241 La. 592, 129 So.2d 786 (1961). There simply was no evidence whatsoever to the contrary.

Petitioner's argument attempts to isolate several pathological facts and to draw ultimate facts from them allegedly showing that petitioner had nothing to do with the abortion and that the instrumentation occurred at a later date. However this argument is faulty in two respects. First of all, it attempts to reach an all-encompassing conclusion from a few isolated facts, and secondly, it ignores the totality of the other evidence which clearly indicates instrumentation by petitioner on March 22 to be the cause of the expulsion of the fetus on April 6.

The Board did not consider only isolated facts or events. It considered a set of facts and circumstances in toto, and upon this made its decision. The fact that the record of the hearing is over 200 pages and that it was only after having this typed and reviewing it that the Board made its decision indicates that the members of the Board considered the entire set of circumstances and considered it with great care.

A reading of the transcript shows the following uncontroverted factual picture. Miss Marthet (now Mrs. Smith), then pregnant, intended to seek an abortion from Dr. Knight. She advised an investigator and the parish sheriff's office of her intention. Since the girl was determined to obtain the abortion, appropriate arrangements were made to document the evidence of the act if it, in fact, occurred. Her pregnancy was confirmed and her physical condition recorded prior to her visit to the petitioner. This examination revealed a pregnant uterus in its ordinary closed condition. Her visit to petitioner's office immediately subsequent to the initial examination was corroborated by the sheriff's office. She was under surveillance by the sheriff's office except for the time she was actually in the petitioner's examination room. She was examined immediately following her visit to petitioner's office, and her condition revealed a change in the cervix in that a slight dilation had occurred. The girl also gave a history of being probed by petitioner while in his office. Later that night the girl began to hemorrhage badly and was admitted to the hospital where it was observed that her cervix had continued to dilate. Treatment at the hospital resulted in a decrease in her symptoms, and she was therefore discharged. She was accompanied directly to the criminal court to testify at the preliminary hearing against petitioner and from there was placed in a convent by the sheriff for her protection, where she remained until her symptoms reappeared, necessitating additional hospital care. Three days later in the hospital she delivered a stillborn male fetus.

The girl's testimony as to her activities relative to petitioner were corroborated, and medical testimony was given by the examining physician, to the effect that the change in the appearance of the cervix during the interval between the first examination prior to the visit to petitioner's office and the second examination immediately subsequent thereto was consistent with deliberate instrumentation, and that he could not conceive of any cause other than instrumentation which would have caused the change in the physical appearance of the uterus in the time period between the two examinations.

Presented this factual picture, uncontradicted by any other evidence, it is certainly reasonable for the Board members, who considered this not as ordinary laymen, but as physicians, to reasonably conclude that an abortion had in fact been accomplished by petitioner, and therefore that just cause existed under the Medical Practice Act for the suspension of his license.

From the foregoing, it is apparent that petitioner's statement of the case is in error as to the evidence submitted relative to the condition of the uterus, the knowledge of the Board as to such condition, and most importantly, about the three days allegedly unaccounted for.

Petitioner raises the spectre of instrumentation at another time and by another person other than himself in an effort to avoid the conclusion reached by the Board and apparently desires to ignore the facts relative to the obvious changes in the cervix caused by

dilation and the fact that the girl was in a convent during the three-day period referred. He apparently relies instead on a medical inference drawn from the description of the state of the fetus and several other isolated medical facts. It was just such an argument that was presented by petitioner in the mandamus proceeding.

In the mandamus proceeding, petitioner attempted to show that the medical evidence was manifestly incredible, particularly that given by Drs. Parker and Fowler, and that such evidence would not reasonably support a finding that he had committed an abortion by instrumentation on March 22, 1965.

He attempted to attack the testimony and evidence through the use of Dr. Eugene Countiss, called as an expert witness on his behalf. Petitioner's efforts along this line consisted of the isolation of several factors, such as the lack of immediate bleeding, which were presented to Dr. Countiss for consideration in the hopes that his opinion would weaken the probative value of the findings of the two doctors who had testified at the hearing.

However, when presented with the complete factual circumstances as considered by Dr. Parker, Dr. Countiss' opinion completely supported the opinion stated by Dr. Parker. He, too, felt that instrumentation was the most probable cause of the change in the physical findings observed by Dr. Parker.

More significantly, when given a lengthy hypothetical question based on all of the evidence which the Board had before it on May 1, 1965, he supported the Board's conclusion as the only reasonable one. Thus, petitioner's own expert proved that the Board was not arbitrary. It certainly cannot be said that the Board's conclusion that an abortion had been committed by Dr. Knight was plainly contrary to the facts or unsupported by evidence.

The Fourth Circuit Court of Appeals commented on the validity of this argument in the following manner.

> "Dr. Knight was charged with committing an abortion. The evidence overwhelmingly supports the conclusion he did perform an abortion on Mrs. Smith as he was charged. Although on the trial of this mandamus, he attempted to establish by expert testimony that the medical facts recited to the Board were preposterous, and the Board composed of physicians well knew the medical evidence did not support its conclusion that he had performed an abortion, his own expert witness testified the Board's conclusion was reasonable. Apparently, plaintiff failed to give the entire history of Mrs. Smith to his expert. However, on cross-examination, defense counsel propounded a hypothetical question based on the medical facts recited hereinabove, and the plaintiff's expert agreed it was reasonable to conclude there was an abortion as the result of instrumentation."

Furthermore, the trial judge in the mandamus proceedings summarized his thoughts on the facts presented to him by commenting in his opinion as follows:

> "The record of the hearing before the Louisiana State Board of Medical Examiners and the evidence in this case fail to show that the Board's position was arbitrary or capricious. *The testimony before the Board and in this mandamus action leaves no doubt that Dr. Sidney C. Knight did perform an abortion on Charmaine Marthet* [Smith] *on March 22, 1965.*" (Emphasis and marital name added.)

It is therefore clear that the Board's decision was not grounded on a "short record" and that important evidence was not withheld from it. When petitioner's own expert witness was presented with the entire factual medical picture, he too agreed with the Board's position that the expulsion of the fetus was due to instrumentation by the petitioner.

It is therefore respectfully submitted that the allegations and arguments raised in this syllabus point by petitioner are simply not supported by the facts in the record.

II.

CONSTITUTIONALITY OF THE STATUTE

Petitioner challenges the constitutionality of the Louisiana State Medical Practice Act insofar as it regulates the performance of abortions on the grounds

that it is an arbitrary invasion of the right of the physician to prescribe for his patient in accordance with his best professional knowledge and that it is also an arbitrary invasion of the fundamental right of a woman to determine when to bear offspring.

Petitioner further alleges that there is no compelling state interest sufficiently strong to justify the prohibition of abortion by a licensed physician on a woman who desires the abortion and that the statute is a law respecting the establishment of religion in violation of the constitution because the primary purpose or effect is the advancement of a religious dogma.

It is respectfully submitted that this Honorable Court is without jurisdiction to consider these questions because they were not seasonably raised in nor passed upon in the Louisiana State Supreme Court. *Ellis v. Dixon*, 349 U.S. 458 (1955); *Herdon v. Georgia*, 295 U.S. 441 (1935).

CONCLUSION

On the basis of the foregoing, it is respectfully submitted that no federal question of substance has been properly raised by the facts of this case or seasonably raised by the pleadings to justify review by certiorari. Furthermore, all proceedings below were conducted in the accepted and usual course of judicial and administrative proceedings so as to preclude the need for an exercise of this Honorable Court's power of sup-

ervision. Therefore, the writ of certiorari prayed for should be denied.

RESPECTFULLY
SUBMITTED,

ADAMS AND REESE

By: _____
RICHARD C. BALDWIN
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Medical Examiners

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing opposition to petition for writ of certiorari has this day been placed in the United States mail, postage prepaid and addressed to Mr. Benjamin Smith of Smith, Scheuermann & Jones, 305 Baronne Street, New Orleans, Louisiana.

New Orleans, Louisiana, this ___ day of _____, 1969.

_____
RICHARD C. BALDWIN

EXHIBIT A

SUMMARY OF THE TRANSCRIPT OF THE BOARD'S ADMINISTRATIVE HEARING IN EVIDENCE AS COURT EXHIBIT No. 8

A. Present were:

1. All members of the Louisiana State Board of Medical Examiners: Rhett McMahon, M.D., President; J. Morgan Lyons, M.D., Secretary-Treasurer; Robert P. Lucas, M.D., Charles B. Odom, M.D., and Richard E. C. Miller, M.D., members.

2. Attorneys representing Louisiana State Board of Medical Examiners: Adams and Reese, Attorneys at Law, through Messrs. Richard C. Baldwin and Thomas J. Wyllie.

3. Attorneys representing Dr. Sidney C. Knight: Frank V. Zaccaria and A. J. Graffagnino.

4. Also present: Dr. Sidney C. Knight, respondent; Mrs. May M. Hebert, Board Secretary; and Mrs. Helen R. Dietrich, reporter.

B. Witnesses who testified and resume of their testimony:

1. MISS CHARMAINE MARTHET who testified that on March 22, 1965, she went to Dr. Sidney Knight's office with a Jefferson Parish woman deputy, Shirley Guagliarado, at approximately 5:30 or 6 P.M.; that Miss Guagliarado was at all times with her except when she saw Dr. Knight; that she saw Dr. Knight alone and asked him to perform an abortion on her; that because he had had prior trouble with the Board of Medical Examiners and thought Miss Marthet was an informer, he had first declined to do so; that he finally consented and put her on the examination table; that he opened her up with a speculum; that after doing so he introduced an instrument known as a probe into her womb five or six times; that thereafter she left accompanied by Mrs. Guagliarado; that they met Captain William Warner of the Jefferson Parish Sheriff's office and Mr. Frank Cefalu and others about two blocks away at Tharp-Sontheimer Funeral Home where same were waiting for her; that she was thereafter taken to Dr. Mark Parker's office for an examination; that she had been to Dr. Parker immediately before going to Dr. Knight's office for an examination; that she had been to see Dr. Fowler on March 19 and 22, 1965, to make sure she was pregnant; that the results of her pregnancy tests were positive; that she decided she was going to have an

abortion despite Captain Warner's and Mr. Cefalu's attempts to dissuade her; Dr. Parker sent her home on the night of March 22; that she went directly home, took a sleeping pill and at 3 o'clock awoke because she was bleeding heavily; she was advised by Dr. Fowler to put her legs up and lie down; that the next day she went to Southern Baptist Hospital and remained there from March 23, 1965, to March 31, 1965; that she temporarily stopped bleeding on March 31 and was released from the hospital; that on March 31, 1965, she was taken directly from the hospital to testify at the preliminary hearing pertaining to criminal charges against Dr. Knight; that immediately after the preliminary hearing she was taken to the Convent of the Good Shepherd or Our Lady of the Lake Convent where she stayed until April 3, 1965; that on April 3, 1965, she again began bleeding heavily and was taken back to Southern Baptist Hospital; that on April 6, 1965, she passed a fetus; that she is sure Dr. Knight performed an abortion on her; that she has known Dr. Knight since late 1961 or early 1962; that during this period she has often gotten prescriptions for barbiturates and amphetamines without an examination on many occasions; that she got the prescriptions simply by asking for them.

2. MISS SHIRLEY GUAGLIARDO who testified that she is a deputy sheriff for the Parish of Jefferson; that on March 22, 1965, she took down a statement from Miss Marthet in Captain Warner's office because she was secretary to Captain Warner; that she, Mr. Cefalu and Miss Marthet left Captain Warner's office at 5 P.M.; that Mr. Cefalu let them out of a car near Dr. Knight's office; that she went with Miss Marthet into Dr. Knight's office and stayed with her until Dr. Knight took Miss Marthet into his office; that Dr. Knight and Miss Marthet came out of the office and went into the examination room alone; that they stayed there fifteen or twenty minutes at most; that before Miss Marthet went to Dr. Knight, Deputy Gloria Gunter came in; that Deputy Gloria Gunter was still there when she and Miss Marthet left; that after leaving she and Miss Marthet met Captain Warner, Mr. Cefalu and other deputies at Tharp-Sontheimer Funeral Home near Dr. Knight's office; that Dr. Mark Parker thereafter examined Miss Marthet around 7 P.M.; that she did not know Miss Marthet prior to March 22.

3. CAPTAIN WILLIAM J. WARNER who testified that he is a captain of the Jefferson Parish sheriff's office in charge of vice and narcotics; that he interviewed Miss

Marthet on March 22, 1965, when she came in stating she was pregnant and she was going to have an abortion; that he tried to talk her out of it; that he could not and he thereafter took a statement from her pertaining to alleged previous abortions by Dr. Knight; that he asked his secretary Miss Shirley Guagliardo to accompany Miss Marthet to Dr. Knight's office; that thereafter Mr. Cefalu, Miss Guagliardo and Miss Marthet left and went to Dr. Knight's office; that later he met these three people at Tharp-Sontheimer Funeral Home near Dr. Knight's office; that Miss Marthet related to him that Dr. Knight had performed an abortion on her; that on March 23, 1965, he served a search warrant on Dr. Sidney Knight along with Lieutenant Fred Roth and Richard Tompson; that a metal probe was obtained; that he placed Dr. Knight under arrest.

4. DR. MARY FRANCES MAYFIELD who testified that she is a licensed medical doctor in the State of Louisiana and was at the time a pathologist at Southern Baptist Hospital; that she performed a Wampole test on a specimen of Miss Marthet submitted at the request of Dr. Fowler to determine if Miss Marthet was pregnant; that the test was positive; that on March 22, 1965, Miss Marthet was not a patient

at the hospital; that a further Wampole test was performed on March 23, 1965, when Miss Marthet was an in-patient at the hospital; that the test was positive; that another test was performed on material expelled from the uterus of Miss Marthet on April 6, 1965; that the test indicated a macerated fetus was expelled; that it was a male fetus of approximately a 14-week gestation.

5. DR. ROBERT R. FOWLER who testified that he is a licensed practicing physician in the State of Louisiana; that he first saw Miss Marthet on March 18, 1965, to examine her to see if she was pregnant; that he determined that she was 12 to 14 weeks pregnant; that on March 22, 1965, he again tested her to see if she was pregnant and this time had a specimen sent to Baptist Hospital to determine through a Wampole test whether she was pregnant; that the tests were positive, both the clinical test and the physical examination; that he did not see her again until March 23, 1965, when he saw her with moderate to severe vaginal bleeding, severe lower abdominal cramps, temperature and severe pelvic tenderness; that upon examination, the cervix was a good 1½ to 2 fingers dilated; that the uterus was exquisitely tender; that there was a feeling of a mass exquisitely tender in the right adnexal area and he

diagnosed this at the time as an incomplete versus inevitable abortion with a possibility of a right broad ligament hematoma and a severe, acute pelvic inflammatory disease; that he kept her in the hospital from March 23 until March 31, 1965; that he consulted with Dr. Jason Collins on the case; that Dr. Collins examined her and found the same findings and a diagnosis of imcomplete versus inevitable septic abortion and a possibility of a haemoperitoneum on the right side; that she left the hospital on March 31 but came back in on April 3, 1965, when she was again tender, had vaginal bleeding and the cervix was still dilated; that on April 6, 1965, she expelled a macerated fetus; that at no period from the first time he saw Miss Marthet up to the time she aborted the macerated fetus was any instrumentation used by him; that both he and Dr. Collins had thought this would be hazardous in view of her bleeding; that even though he and Dr. Collins had made a diagnosis of inevitable abortion, Miss Marthet was allowed to go from the hospital on March 31 because in a large number of cases a fetus cannot be viable and can be carried for a good period of time; that when a dead fetus is carried the uterus will go into a spontaneous contraction within a period of days or weeks and expel the fetus itself and that this is what he

believes happened when she was admitted again on April 3, 1965; that it is a physical impossibility to dilate the internal os with the intrusion of a finger; that a simple pelvic examination cannot produce an abortion.

6. DR. ALTON MARK PARKER who testified that he is a practicing licensed physician in the State of Louisiana; that he is assistant coroner for Jefferson Parish; that he examined Miss Marthet on March 22, 1965, for the first time; that he did an abbreviated physical and a pelvic examination at approximately 4:45 P.M. in his office; that the pelvic examination revealed a succulent cervix discolored blue that was soft and closed at the internal ring not admitting the tip of his finger; that the uterus was noted to be approximately 12 to 14 weeks gestational size; that his diagnosis was that the patient was 12 to 14 weeks pregnant; that he next saw Miss Marthet on the same day at approximately 7:40 P.M. in his office; that he performed another examination which found again the bluishly discolored cervix that now admitted the tip of his examining finger at the level of the internal os; that there was a greater degree of surface irritation to the vaginal introitus; that his findings on the second examination as compared with those of the first would be con-

sistent with those found after deliberate instrumentation of a pregnant uterus and cervix; that they would not be consistent with a normal routine pelvic examination, no matter how vigorous; that the internal ring would not be dilated even under vigorous pelvic examination; that there is nothing other than instrumentation which would ordinarily produce the findings of the second examination within the time period he saw Miss Marthet; that Miss Marthet told him that Dr. Knight had probed her in between the time she first saw Dr. Parker and the second time she saw him; that the only thing which he believes could reasonably have occurred between the two visits would have been instrumentation to dilate the internal ring to the extent that it was dilated; that the internal os was completely closed on his first examination, but on the second examination it admitted the tip of his finger without forcing the ring; that Miss Marthet was accompanied by Miss Guagliardo and Mr. Cefalu, when she came back to the office to be examined.

Dr. Knight did not testify. He was represented by his attorneys. Mr. Zaccaria, on his behalf, made certain objections noted in the record. It was also noted that the Board made a determination to allow Dr. Knight additional time within which to produce any witnesses

he would desire to produce and that on the advice of his counsel, Dr. Knight chose to close the matter at this time rather than put on any evidence.

EXHIBIT B

CIVIL DISTRICT COURT FOR THE
PARISH OF ORLEANS, STATE OF LOUISIANA

No. 451-628 DIVISION "F" DOCKET No. 5

DR. SIDNEY C. KNIGHT

versus

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

JUDGMENT

This cause having been heretofore heard and submitted to the Court for adjudication on the application of Dr. Sidney C. Knight, relator herein, for a writ of mandamus and injunction, and the Court considering the law, evidence, argument of counsel, briefs filed by counsel, and for the written reasons herein filed and made part of the record:

AT WHICH HEARING THERE WERE PRESENT:

DOUGLAS ALLEN, Attorney for Dr. Sidney C. Knight

THOMAS J. WYLLIE, Attorney for Louisiana State Board of Medical Examiners

IT IS ORDERED, ADJUDGED AND DECREED, that the alternative writ of mandamus and injunction herein issued be recalled, set aside and annulled and that the Relator's suit is dismissed at his costs.

JUDGMENT READ, RENDERED, AND SIGNED, IN OPEN COURT APRIL 13, 1967.

(Signed) A. E. RAINOLD
JUDGE

CIVIL DISTRICT COURT FOR THE
PARISH OF ORLEANS, STATE OF LOUISIANA

No. 451-628 DIVISION "F" DOCKET No. 5

DR. SIDNEY C. KNIGHT

versus

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

REASONS FOR JUDGMENT

Dr. Sidney C. Knight brings this Petition for a Writ of Mandamus and Injunction to order the Louisiana State Board of Medical Examiners to reissue his license to practice medicine which was suspended following an administrative hearing by the Board on charges alleging that he performed an abortion on Charmaine Marthet on March 22, 1965.

Dr. Knight alleges that the Board's action was arbitrary, malicious and capricious with reference to the administrative hearing. He further alleges that the Louisiana State Board of Medical Examiners and others conspired to deprive him of due process of law; that the decision of the Board on May 1, 1965 suspending his license was prejudicial, and alleges that the Board, its investigators and the Jefferson Parish Sheriff's Office and Charmaine Marthet conspired to manufacture evidence and testimony against him. He denies performing any abortion on a person by the name of Charmaine Marthet.

The record shows that on May 1, 1965, Dr. Knight appeared before the Board with his then attorney, Mr. Zaccaria, pursuant to a notice of April 5, 1965 that a hearing would be held by the Board on "moral and professional conduct; moral and professional competence; your alleged procuring, aiding or abetting in procuring one or more abortions or attempting same; prescribing of habit-forming drugs in other than a legal and legitimate manner," which notice was later condensed and clarified by stipulation between his counsel and counsel for the medical board to be "those matters arising out of Dr. Knight's arrest on May 22 and May 23."

Counsel for Relator complains that the notice was not adequate of the charges and specifications. This Court is of the opinion that Dr. Knight had adequate notice of the charges and specifications.

It is further the opinion of the Court, as shown by the record of the hearing before the Board which is in evidence and from the testimony adduced at this trial, that the charge in Dr. Knight's Petition for a Writ of Mandamus that the decision of the Board suspending his license is without foundation; and that the Relator failed to prove that the Board, its investigators and the Jefferson Parish Sheriff's Office conspired to manufacture evidence against him.

The record of the hearing before the Louisiana State Board of Medical Examiners and the evidence in this case failed to show that the Board's decision was arbitrary or capricious. The testimony before the Board and in this Mandamus action leaves no doubt that Dr. Sidney C. Knight did perform an abortion on Charmaine Marthet on March 22, 1965.

It is significant to note that although Dr. Knight attended the hearing of this Mandamus case, which consumed five days of the Court's time, he failed to take the witness stand in his own behalf.

Dr. Knight by Supplemental Petition complains that the action of the Louisiana State Board of Medical Examiners suspending his license for five years is tantamount to revocation of his license, and that the Board has no power so to do. In the opinion of the Court, the Board had the power to suspend his license for a period of five years.

By second Supplemental Petition Dr. Knight alleges that the testimony of two witnesses who appeared be-

fore the Board was incredible. The Court finds no foundation whatsoever for these charges and allegations.

Petitioner alleges that the Medical Practice Act is unconstitutional in that Paragraph 6 of R.S. 37:1825 is an unlawful and unauthorized extension of the authority granted to the Legislature by Article 6 Section 12 of the Constitution of the State of Louisiana of 1921, and that the Medical Practice Act fails to establish subpoena power, and, therefore, there is no method by which an accused can compel the attendance of witnesses, and, accordingly, that the Act denied Dr. Knight due process of law.

The Medical Practice Act is constitutional. See *Louisiana State Board of Medical Examiners vs. Fife*, 162 La. 681, 111 So. 58, Affirmed 274 U.S. 720. (1927). The regulation of the practice of medicine is a proper delegation of the State's police power, and the right to practice medicine is not an absolute right. *La. State Bd. of Medical Examiners v. Booth*, 76 So. 2d 15 (1955). The Act has been held as not a violation of the constitutional rights to due process and equal protection of the laws because requirements for the right to practice appear to be based on arbitrary or discriminatory grounds. *La. State Bd. of Medical Examiners v. Weller*, 77 So. 2d. 166 (1955); for any statute is valid if its intent and purpose are susceptible of reasonable interpretation, *La. State Bd. of Medical Examiners v. Tackett*, La. App., 71 So. 2d 137 (1954); and if the ruling of the Board was arbitrary the remedy is review by a competent Court.

With regard to Plaintiff's allegation that the Medical Practice Act failed to establish subpoena power, it is sufficient to state that the Board is not a judicial tribunal, performs no judicial function, and therefore the suspension of a license should not take the form of a trial.

The Supreme Court of the United States has declared that in administrative proceedings due process does not require a particular form or method of procedure, but that its requirements are satisfied if the person affected by the proceeding has reasonable notice and reasonable opportunity to be heard and to present his claim or defense. *Hurwitz v. North,* 271 U.S. 40, 46 S.Ct. 384 (1926).

Accordingly, Relator's application for a Writ of Mandamus and Injunction will be recalled and denied and Relator's suit dismissed at Relator's costs.

(Signed) A. E. RAINOLD
JUDGE

New Orleans, Louisiana
April 13, 1967.

EXHIBIT C

COURT OF APPEAL
FOURTH CIRCUIT — STATE OF LOUISIANA

DR. SIDNEY C. KNIGHT

versus No. 2807

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

APPEAL FROM THE CIVIL DISTRICT COURT, PARISH OF ORLEANS, STATE OF LOUISIANA, No. 451-628, HONORABLE A. E. RAINOLD, JUDGE.

L. JULIAN SAMUEL, JUDGE

(Court composed of Judges Louis H. Yarrut, L. Julian Samuel and Luther E. Hall)

ALLEN & MAMOULIDES
DOUGLAS A. ALLEN,
JOHN M. MAMOULIDES,
RICHARD TROY
for Relator-Appellant

ADAMS & REESE
THOMAS J. WYLLIE
for Respondent-Appellee

AFFIRMED

Dr. Sidney Knight filed this suit against the Louisiana State Board of Medical Examiners, seeking: (1) by mandamus to compel the Board to reinstate his license to practice medicine; alternatively (2) to en-

join the Board from refusing to reinstate that license; and in the further alternative (3) that the Court annul an administrative action suspending the license for a period of five years.

Essentially, plaintiff contended: (1) LSA-R.S. 37:-1285, the statute under which his license was suspended, is invalid insofar as it fails to set a maximum time limit on suspensions; (2) he was deprived of a property right without due process of law because of the manner in which the hearing was conducted; and (3) the Board conspired to manufacture evidence against him and then improperly concluded he had performed an abortion on one Mrs. Smith, the finding which resulted in the suspension of his license.

When the petition was filed the Court issued alternative writs of mandamus and injunction. The defendant Board then pleaded various exceptions including an exception of lis pendens which the trial court maintained. On appeal from that judgment this Court reversed and remanded the matter for further proceedings. See *Knight v. Louisiana State Board of Medical Examiners*, 195 So.2d. 375.

After a trial on the merits following remand judgment was rendered recalling the alternative writ of mandamus and injunction and dismissing the suit. Plaintiff has appealed.

The litigation stems from the defendant Board's suspension of Dr. Knight's license to practice medicine for five years after determining he had illegally performed an abortion. The Board's authority for this ac-

tion is LSA-R.S. 37:1285, which provides in pertinent part:

> "The board may refuse to issue, suspend, or institute proceedings in any court of competent jurisdiction to revoke any certificate issued under this Part for any of the following causes:
>
> (6) Procuring, aiding or abetting in procuring an abortion unless done for the relief of a woman whose life appears in peril after due consultation with another licensed physician; . . ."

The events leading to the suspension, which he now asserts constitute a conspiracy to deprive him of his license, are these:

In March, 1964 the Board summoned Dr. Knight to appear before it to answer charges that he had performed an abortion on one Mary H., who was not available to testify because she had left the state. Dr. Knight was present and represented by counsel. Because the evidence was inconclusive, his license was not suspended; however, his 1964 renewal license was issued on a probationary status. This meant that his professional activities would be subject to investigation by the Board in the future.

In November, 1964 Dr. Knight was notified of a hearing by the Board regarding charges that he had performed an abortion on a Mrs. Smith (who was an ad-

mitted prostitute). After receiving this notification, Dr. Knight persuaded Mrs. Smith to sign an affidavit stating he had never performed an abortion on her and she never had an abortion performed. The doctor forwarded the affidavit to the Board and later was notified by them that the hearing had been cancelled. The Board did convene on December 10, 1964, the scheduled date of the hearing, at which time it interviewed several witnesses concerning alleged abortion activities of Dr. Knight and two other physicians in the greater New Orleans area. No action was taken against Dr. Knight at that meeting.

Thereafter the defendant hired Southern Research, a local detective agency, to investigate Dr. Knight. Frank Cefalu, one of the agency's employees, conducted most of the investigation. While making inquiries, he interviewed the Mrs. Smith who had previously appeared before the Board in December, 1964. In March, 1965 Mrs. Smith informed Cefalu she again was pregnant and intended to ask Dr. Knight to perform an abortion. Cefalu reported this to his office and was instructed to relay the information to the Jefferson Parish authorities. After this had been done, he and the Parish officials attempted to dissuade Mrs. Smith from going through with the abortion. Having failed in the attempt, Cefalu and the Jefferson Parish authorities decided to gather evidence to establish an abortion had been performed, should the act be committed.

Mrs. Smith consulted Dr. Knight on March 23, 1965. Before going to his office she was examined by two doctors, both of whom confirmed her pregnancy. In

addition, their diagnoses were supported by positive laboratory tests. After her pregnancy was confirmed she went directly to the office of Dr. Knight in the company of a female deputy sheriff. When Mrs. Smith was called into a private examination room, the deputy remained in the waiting room for approximately twenty minutes until she returned. According to Mrs. Smith, Dr. Knight probed the uterus five or six times with an instrument in order to abort pregnancy as she had requested.

Immediately after leaving Dr. Knight's office she was returned for re-examination to the office of one of the doctors who had diagnosed pregnancy. His findings were that the physiological changes in Mrs. Smith's cervix could only have been caused by the instrumentation she had described. There was a time lapse of only three hours between this doctor's first examination, before she visited Dr. Knight, and the second examination, made after she had seen Dr. Knight.

Mrs. Smith then returned home. That same night she began bleeding profusely. She consulted a doctor who had examined her before the abortion and he sent her to Baptist Hospital the next day. On admission her condition was diagnosed as acute pelvic inflammatory disease and possible incomplete abortion.

On March 23, 1965 Jefferson Parish officials arrested Dr. Knight on the criminal charge of abortion.

Mrs. Smith remained in Baptist Hospital until March 31, 1965, receiving treatment which retarded ex-

pulsion of the fetus. On her release she was taken directly to court to testify in the preliminary hearing on the criminal charges against Dr. Knight.

At this hearing Dr. Knight was represented by counsel and was fully informed of the facts upon which the charges for which he was arrested were based. The court reached a finding of probable cause and bound the accused over for trial on the charges of criminal abortion.

On April 3, 1965 Mrs. Smith began hemorrhaging again and was returned to Baptist Hospital where her condition was provisionally diagnosed as incomplete abortion. On April 6, 1965 she finally aborted expelling a dead three and a half month old male fetus.

On April 5, 1965 the defendant notified Dr. Knight that a hearing would be held on May 1, 1965 concerning charges of unprofessional conduct. The letter of notification read:

"Dear Doctor Knight:

The Louisiana State Board of Medical Examiners requests that you appear at the office of the Board, 521 Hibernia Bank Building, New Orleans, Louisiana, at 9:00 A.M., on Saturday, May 1, 1965, for a hearing before the Board on your moral and professional conduct; moral and professional competence; your alleged procuring, aiding or abetting in procuring one or more abortions or attempting

same; prescribing of habit-forming drugs in other than a legal and legitimate manner.

You are duly advised of the fact that you may present any witnesses or evidence that you wish, and you have the right to be represented by counsel if you so desire.

Your prompt acknowledgment of receipt of this notice will be appreciated.

Yours very truly,

J. MORGAN LYONS, M.D.
Secretary - Treasurer"

Dr. Knight's attorneys, Frank Zaccaria and A. J Graffagnino, attempted to cancel the May 1st hearing by obtaining a temporary restraining order from the Civil District Court for the Parish of Orleans. When this failed, Mr. Zaccaria telephoned a member of the Board requesting more particulars on the charges Dr. Knight would have to answer at the hearing. He was advised the hearing would be restricted to matters for which Dr. Knight was arrested on March 23, 1965. As the same two attorneys also had acted as Dr. Knight's counsel for the preliminary hearing on March 31, 1965, they were fully apprised of the facts upon which the criminal charges were based. We desire at this time to make it clear there is no indication of any improper action on the part of Dr. Knight's attorneys; all of the evidence contained in the record is to the contrary.

In another court action stemming from Dr. Knight's ultimate suspension, i.e., an injunction proceeding initiated by the Board to prohibit Dr. Knight's continued practice of medicine after his suspension, Mr. Zaccaria, again representing Dr. Knight, stipulated he was informed before the hearing that charges to be heard would consist only of matters for which Dr. Knight was arrested in March. He further stipulated the hearing was in fact limited to these charges.

The formal hearing was held as scheduled. Although a motion for a continuance made on Dr. Knight's behalf was denied, the Board offered to hold the hearing open to permit Dr. Knight to introduce rebuttal evidence after the testimony of all the Board witnesses was heard. On the advice of his attorneys, Dr. Knight did not testify because it was feared in so doing he would prejudice his defense of the criminal charges then pending. The doctor's attorneys also declined the Board's offer to hold the hearing open to permit the introduction of rebuttal evidence.

On May 5, 1965 Dr. Knight was notified he was suspended for a period of five years.

From this evidence the trial court concluded the Board acted properly in suspending Dr. Knight for five years under the authority of LSA-R.S. 37:1285. The trial court further concluded the administrative hearing fully proved Dr. Knight had performed an abortion and that the opportunity afforded to him to answer the charges met the requisites of due process of law.

Plaintiff first argues R.S. 37:1285, as applied by the trial court, would be invalid because quasi-penal statutes should be strictly construed. In accordance with the rules of strict construction, plaintiff asserts, the suspension provision is invalid because the period for which suspension may be imposed has not been defined and the five year ruling of the Board is tantamount to revocation. Relying on *City of New Orleans v. Stein*, 137 La. 652, 69 So. 43, plaintiff argues there can be no crime that is not defined by statute and for which the legislature has imposed no specific penalty.

The cited case declares invalid an ordinance giving the Board of Health power to punish by imprisonment violators of certain health regulations. The Court held that the power to punish by imprisonment must be specifically defined. In our view the cited case is inapposite because it deals with a criminal statute. The statute here attacked by plaintiff as too vague and indefinite is distinguishable. It is a regulatory provision passed by the legislature to insure that the medical profession in this state will meet certain standards of conduct consistent with the needs of the general welfare of is people. The penalty for failure to do so is not imprisonment; one who violates rules of ethical practice simply may lose his right to practice medicine, either temporarily or permanently.

Citing *Sciortino v. Louisiana State Board of Cosmetology*, 194 So.2d 409, as authority for the proposition that laws which deprive a professional man of his license are quasi-penal and must be construed strictly, plaintiff argues that its failure to define a suspension

invalidates R.S. 37:1285 because the Board is giving sweeping powers not limited by the legislature; he asserts the five year suspension is tantamount to revocation, an action which the statute provides can be taken only by the courts.

In the Sciortino case the Board of Cosmetology attempted to revoke the license of a cosmetologist charged with fraudulently attempting to obtain certificates for others for money or anything of value by fraudulent means. Because the facts failed to support that Sciortino had himself attempted to obtain the certificates or had received anything of value from those applicants he had fraudulently assisted, the Court held his license could not be revoked because the evidence failed to prove him guilty of the statutory offense he had been charged with violating.

If the reasoning of *Sciortino* were applied to the instant case, it would fully support the Board's action. Dr. Knight was charged with committing an abortion. The evidence overwhelmingly supports the conclusion he did perform an abortion on Mrs. Smith as he was charged. Although on the trial of this mandamus he attempted to establish by expert testimony that the medical facts recited to the Board were preposterous, and the Board composed of physicians well knew the medical evidence did not support its conclusion that he had performed an abortion, his own expert witness testified the Board's conclusion was reasonable. Apparently plaintiff failed to give the entire history of Mrs. Smith to his expert. However, on cross examination, defense counsel propounded a hypothetical ques-

tion based on the medical facts recited hereinabove, and plaintiff's expert agreed it was reasonable to conclude there was an abortion as the result of instrumentation.

Unlike *Sciortino*, the evidence in this case establishes Dr. Knight's action falls within the statutory prohibition. We conclude a five year suspension is not equivalent to revocation nor is it oppressive considering the gravity of the offense.

Plaintiff also contends the Board cannot impose the penalty of suspension because its conclusion was based on evidence obtained by entrapment. While we are inclined to view entrapment as a defense only against a criminal charge (see *State v. Ward*, 361 Mo. 1236, 239 S.W.2d 313), we conclude that even if the rule is applicable, the requisites of entrapment are not met in the instant case. In 22 C.J.S. Criminal Law 45 (2) the elements of entrapment are outlined as follows:

> "'Entrapment,' within the rule recognizing it as a defense, as discussed supra § 45 (1), is shown where it appears that officers of the law or their agents incited, induced, instigated, or lured accused into committing an offense which he otherwise would not have committed and had no intention of committing. Stated otherwise, entrapment is the conception and planning of an offense by an officer and the procurement of its commission by one who would not have perpetrated it except for the trickery, persuasion, or fraud of the of-

> ficer. Entrapment occurs only when the criminal conduct is the product of the 'creative activity' of law enforcement officials, that is, only where the criminal design originates in the mind of the police officer and not with accused, . . ."

Not only did the law enforcement officials and the Board's representatives not originate the plan for Mrs. Smith to ask Dr. Knight to perform an abortion, but representatives from both groups attempted to dissuade her from this course of action. In addition, Mrs. Smith's father was contacted and asked to do what he could to prevent his daughter from having the abortion performed.

Finally, plaintiff urges his suspension was invalid because he was not given sufficient notice of the specific charges to be heard by the Board. We agree that the letter advising him of the May 1, 1965 hearing did not, in itself, sufficiently inform him of those charges. However, before the hearing his counsel was advised the charges would be confined to those matters for which he was arrested on March 23, 1965. In view of the fact that he was represented by the same attorneys at both the preliminary hearing on March 31, 1965, where the criminal charges were fully outlined, and the Board hearing on May 1, 1965, we are convinced that Dr. Knight and his attorneys knew exactly what charges of professional misconduct would be heard by the Board. In addition, according to the admission of one of Dr. Knight's attorneys, the charges against Dr. Knight were specifically outlined by a

Board member to that attorney in a telephone conversation before the hearing was held.

To meet the requisites of procedural due process the notice must be reasonably calculated to apprise the accused of the pending action and to afford him an opportunity to defend himself. In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 315, 70 S.Ct. 652, 657, 94 L.Ed. 865, 873, the Supreme Court stated:

> "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. Milliken v. Meyer, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 278, 132 A.L.R. 1357; Grannis v. Ordean, 234 U.S. 385, 34 S.Ct. 779, 58 L.Ed. 1363; Priest v. Board of Trustees of Town of Las Vegas, 232 U.S. 604, 34 S.Ct. 443, 58 L.Ed. 751; Roller v. Holly, 176 U.S. 398, 20 S.Ct. 410, 44 L.Ed. 520. The notice must be of such nature as reasonably to convey the required information, Grannis v. Ordean, supra, and it must afford a reasonable time for those interested to make their appearance, Roller v. Holly, supra, and cf. Goodrich v. Ferris, 214 U.S. 71, 29 S.Ct. 580, 53 L.Ed. 914. But if with due regard for the practicalities and peculiarities of the case these conditions are reasonably met the constitutional

> requirements are satisfied. 'The criterion is not the possibility of conceivable injury, but the just and reasonable character of the requirements, having reference to the subject with which the statute deals.' American Land Co. v. Zeiss, 219 U.S. 47, 67, 31 S.Ct. 200, 207, 55 L.Ed. 82, and see Blinn v. Nelson, 222 U.S. 1, 7, 32 S.Ct. 1, 2, 56 L.Ed. 65, Ann. Cas. 1913B, 555."

Applying the test of *Mullane* to the instant case, we conclude that the constitutional requisites of adequate notice have been met. In our view Dr. Knight was fully apprised of the charges before the hearing was held. In fact, we conclude the Board afforded the accused more than ample opportunity to refute the charges against him. Even after all the evidence was heard, he was afforded the opportunity to present rebuttal evidence at a later date, an opportunity he rejected.

Since we have concluded that the Board's finding of fact is based on substantial evidence and the law it applied is legally permissible and not arbitrary or capricious, we conclude the trial court properly recalled the alternative writ of mandamus and injunction previously issued.

For the reasons assigned the judgment appealed from is affirmed.

AFFIRMED.